SUPREME COURT, U. S.

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in the

Supreme Court

of the

United States

OCTOBER TERM, 1969

No. 340

BERNIE LUDWIG,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

On

Petition for Writ of Certiorari to the District Court of Appeal of Florida, Third District

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OPINIONS BELOW

The opinion of the District Court of Appeal of Florida, Third District, is reported at 215 So.2d 898 (3rd D.C.A. Fla., 1968). The opinion of the Supreme Court of Florida is reported at 225 So.2d 536 (Fla., 1969).

QUESTIONS PRESENTED

The State respectfully rephrases the questions presented as follows:

POINT ONE

WHETHER AN AFFIDAVIT FOR A SEARCH WARRANT NEED FORMALLY RECITE THE RELIABILITY OF AN INFORMANT IN ADDITION TO A DETAILED RECITAL OF THE UNDERLYING CIRCUMSTANCES.

POINT TWO

WHETHER A LAW ENFORCEMENT OFFICER MAY SEIZE STOLEN PROPERTY OBSERVED DURING THE EXECUTION OF A VALID SEARCH WARRANT.

ARGUMENT

POINT ONE

AN AFFIDAVIT FOR A SEARCH WARRANT NEED NOT FORMALLY RECITE THE RELIABILITY OF AN INFORMANT IN ADDITION TO A DETAILED RECITAL OF THE UNDERLYING CIRCUMSTANCES.

The petitioner contends initially to this Court that his rights under the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution were in fact violated by failure of the affidavit for search warrant (Petitioner's Exhibit E) to allege the reliability of the informant. The State of Florida would most respectfully submit to this Honorable Court that the defendant's view of the law is incorrect.

In *United States v. Ventresca*, 380 U.S. 102, 85 S.Ct. 741, 13 L.Ed. 2d 684 (1965), this Court stated that the underlying circumstances must be recited in the affidavit if a magistrate issuing a search warrant is to properly perform his function. This Court, speaking through Mr. Justice Goldberg, then went on to say,

> "However, where these circumstances are detailed, where reasons for crediting the source of the information is given, and when a magistrate has found probable cause, the court should not invalidate the warrant by interpreting the affidavit in hypertechnical, rather than a common sense, manner."

This Court's opinion in *Ventresca*, supra, is especially applicable in the instant case, in as much as in Ventresca the affidavit for the search warrant did not contain the allegation of reliability which the instant defendant insists is mandatory. It is respectfully submitted that the defendant's attack upon the instant affidavit for search warrant is nothing other than such a "hypertechnical" attack.

His argument, in effect, is that regardless of the quantity of underlying circumstances contained in the affidavit, a search warrant cannot issue unless the affidavit contains an affirmation of the reliability of the source of the information. The State of Florida would submit that the instant affidavit did not need such affirmation.

The officer who swore out the affidavit for the search warrant included in said affidavit a wealth of details: Firstly, the information was derived from the inculpatory statements of someone who had not only stolen the property listed in the affidavit, but who had personally attended the sale to the instant defendant at the particular location specified in the affidavit. Thus the affidavit contained extensive detail obtained from inculpatory statements, and the magistrate in the instant case clearly had probable cause before him for the issuance of the warrant. C.F., *Wooten v United States*, 380 F.2d 230, (Fifth Cir., 1967).

The State might also note in passing that despite the defendant's assertions that the decision of the District Court of Appeal of Florida, Third District, (Petitioner's Exhibit L), flies in the face of this Court's opinion in *Wong Sun v United States*, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441, (1963). This Court in Wong Sun clearly was interested not so much with the reliability of the informer as with the vagueness and sparcity of the information which he gave to the law enforcement officials. See, *Wong Sun v United States*, supra, at 480-81. The State would, therefore, respectfully submit to this Honorable Court that the affidavit was clearly sufficient in light of this Court's decision in *United States v Ventresca*, supra, and that in no way can it be said that any of the defendant's constitutional rights were violated.

POINT TWO

A LAW ENFORCEMENT OFFICER MAY SEIZE STOLEN PROPERTY OBSERVED DURING THE EXECUTION OF A VALID SEARCH WARRANT.

The defendant also contends in his petition that law enforcement officers may not seize property not named specifically in a search warrant even though they are on the premises pursuant to the service of a valid search warrant. The State would most respectfully dispute that contention. The courts of the State of Florida have consistently ruled that officers who are lawfully on the premises may seize property of a contraband nature. *Joyner v City of Lakeland*, 90 So.2d 118, (Fla., 1956); *Bretti v. State*, 192 So.2d 6, (3rd D.C.A. Fla., 1966). This rule of law is shared with the courts of other jurisdictions, including the Federal courts. See e.g., *United States v Eisner*, 297 F.2d 595, (6th Cir., 1962); *Johnson v United States*, 293 F.2d 539, (D.C. Cir., 1969); *People v Roberts*, 47 Cal.2d 374, 303 P.2d 721 (1956); *Nestor v State*, 243 Md. 438, 221 A.2d 365 (1966); *Brooks v State*, 235 Md. 23, 200 A.2d 177 (1964); *Williams v State*, 216 Miss. 158 61 So.2d 793 (1953); *State v McKindel*, 148 Wash. 237, 268 P. 593 (1928).

The State of Florida would also point that this Honorable Court in *Warden v Hayden*, 387 U.S. 294, 18 L.Ed. 2d 782, 87 S.Ct. 1642 (1967), that where officers are lawfully on the premises they could seize "mere evidence" of a crime. The State of Florida would respectfully submit that if it is also permissible to seize mere evidence without a search warrant then it is also permissible to seize the very fruits of a crime.

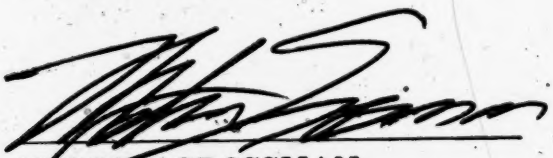
Under Florida Statute Section 901.15 (3), a law enforcement officer may lawfully seize a person without an arrest warrant, "when he has reasonable grounds to believe that a felony has been . . . committed and reasonable grounds to believe that the person to be arrested has committed . . . it." In the instant cause at the hearing on the defendant's motion to suppress the officer who served the search warrant related facts and circumstances which clearly established that there was probable cause to believe the property was stolen. As the District Court of Appeal of Florida, Third District, pointed out, "If a law enforcement officer may lawfully seize a person without *knowing* that he has committed a felony or that a felony has in fact been committed, the officer may surely seize property without *knowing* it is stolen, if he had probable cause (or reasonable ground) to believe it is stolen property."

CONCLUSION

It is respectfully submitted that the decision of the District Court of Appeal of Florida, Third District is in complete accord with the applicable decisions of this Court and that the instant petition for writ of certiorari should be denied.

Respectfully submitted,

EARL FAIRCLOTH
Attorney General
Tallahassee, Florida



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THE STATE OF FLORIDA,

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STATE OF FLORIDA :
: SS
COUNTY OF DADE :

AFFIDAVIT OF SERVICE

I, MELVIN B. GROSSMAN, Assistant Attorney General, State of Florida, first being duly sworn according to law, do depose and say:

I HEREBY CERTIFY that three copies of Brief for the Respondent to the Supreme Court of the United States was served upon HONORABLE GERALD KOGAN, At-

torney for Petitioner, 1201 Biscayne Building, 19 West Flagler Street, Miami, Florida 33130, by mailing the copies of same to him by United States Mail, First Class postage prepaid, pursuant to Rule 33 of this Court, this 31st day of October, 1969.

MELVIN B. GROSSMAN
Assistant Attorney General

Sworn to and subscribed before me at Miami, Dade County, Florida, this 31 day of October, 1969.

NOTARY PUBLIC
State of Florida at Large
My Commission Expires: 3/30/71